

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1762

IN THE MATTER OF:

Served October 26, 1977

Application of OMNIBUS CORPORATION)	Application No. 996
for a Certificate of Public)	
Convenience and Necessity to)	Consolidated Docket No. 380
Perform Charter Operations Pursuant)	
to Six Contracts)	

By Application No. 996, filed May 11, 1977, as amended at the below-referenced public hearing, 1/ Omnibus Corporation (Omnibus) seeks a certificate of public convenience and necessity pursuant to Title II, Article XII, §4(b) of the Compact. Specifically, applicant seeks authority to transport passengers and their baggage in the same vehicle with passengers, over irregular routes, as follows:

Charter operations pursuant to contract:

1. To transport passengers and their baggage in the same vehicle with passengers, between the National 4-H Club Center, 7100 Connecticut Avenue, Chevy Chase, Md., on the one hand, and, on the other, points in the Metropolitan District, restricted to transportation performed pursuant to a continuing contract or contracts with the National 4-H Center (4-H).
2. To transport students between Park (sic) Heritage Apartments, Briarwood Road, Annandale, Va., and Washington School for Secretaries, 2020 K Street, N. W., Washington, D. C., restricted to transportation performed pursuant to a continuing contract or contracts with Clasco, Inc., and further restricted to the transportation of students of the Washington School for Secretaries (WSS).
3. To transport students between Quality Inn Central, 1190 Court House Road, Arlington, Va., and U. S. Customs Service Academy, 3520 Prospect Street, N. W., Washington, D. C., and U. S. Customs Service, 14th Street and Constitution Avenue, N. W., Washington, D. C., restricted to transportation performed pursuant to a continuing contract or contracts with U. S. Customs Service (Customs).

1/ The amendment offered at the hearing reduced the number of contracts to be considered from six to five and imposed the vehicle restriction set forth, infra.

4. To transport passengers between the Guest Quarters, 100 South Reynolds Street, Alexandria, Va., and The American Film Theatre, L'Enfant Plaza, S. W., Washington, D. C., restricted to transportation performed pursuant to a continuing contract or contracts with the U.S. Comptroller of the Currency (Comptroller).
5. To transport passengers between 700 - 19th Street, N. W., Washington, D. C., and Bretton Woods Recreation Center at Seneca, Md., restricted to transportation performed pursuant to a continuing contract or contracts with Bretton Woods Recreation Center (Bretton Woods).

RESTRICTION: The transportation service described in 1 through 5 above is to be performed in school bus vehicles only.

Applicant is a Virginia corporation and holds no permanent authority from any regulatory agency including this Commission. It has been performing various transportation services for several years in the Metropolitan District, including the services proposed herein. By Order No. 1686, served May 13, 1977, Omnibus was directed to cease and desist from the transportation for hire of persons between any points in the Metropolitan District, unless or until appropriate authority was in effect therefor. A motion to stay the effective date of said order was denied by Order No. 1699, served May 23, 1977, and an application for reconsideration of Order Nos. 1686 and 1699 was denied by Order No. 1720, served June 29, 1977.

By Order No. 1716, served June 23, 1977, Omnibus was granted temporary authority to provide service for WSS, Customs and the Comptroller as described above. 2/ Additionally, Omnibus was authorized to provide service from Washington National Airport and Dulles International Airport to the facilities of 4-H. The balance of the authority sought for 4-H and authority to serve Bretton Woods was denied inasmuch as protestant McMichael School Bus Service, Inc. (McMichael), was found ready, willing and able to provide these portions of the required service. The issue of applicant's fitness was specifically reserved for determination herein. Applicant filed an application for reconsideration of Order No. 1716, and said application was denied by Order No. 1724, served July 11, 1977.

Before summarizing the evidence of record herein, one procedural matter requires disposition. At the public hearing on this matter held June 28, 1977, applicant sponsored two exhibits (H-5 and H-6) which were not received into evidence, but which accompany the record as proffers of proof. The two exhibits are identified as verified statements executed by representatives of Customs and Bretton Woods, and they were considered in connection with Omnibus' Application No. 999 for corresponding temporary

2/ See Application No. 999, filed May 16, 1977. A public hearing on this application was held on May 27, 1977.

authority. We believe, however, that the Administrative Law Judge acted properly in excluding the proffered affidavits from the evidence in this record. Ordinarily, applications for operating authority are to be supported by competent witnesses who appear at a duly scheduled public hearing and who are subject to cross-examination by other parties and the Commission's legal department. Rule 20-06 of the Commission's Rules of Practice and Procedure provides, in pertinent part, that

Parties and staff counsel shall have the right of presentation of evidence, cross-examination, objection. . . . Witnesses shall be examined orally, unless the testimony is taken by deposition as provided in Rule 19. . . .

While this rule is not immutable, good cause must be shown for the acceptance of an affidavit in lieu of actual testimony. No such good cause has been shown here, 3/ and we therefore affirm the Administrative Law Judge's exclusion of these exhibits and shall reject the proffers of proof. The Commission shall, however, take official notice of the oral testimony and witness-sponsored exhibits admitted at the hearings on Application No. 999, held May 27, 1977, and Formal Complaint No. 77-1, held May 4, 1977. Except as necessary for the sake of clarity, the evidence adduced at all three hearings will be summarized generally and without reference to particular hearing dates.

Omnibus is engaged generally in the transportation of passengers in school bus vehicles. It maintains facilities in Arlington, Va., for storage and maintenance of its vehicles. Applicant employs several mechanics and has an adequate maintenance and safety program. Omnibus has filed a certificate of insurance in compliance with Commission Regulation 62.

Applicant's fleet includes 79 school buses, at least 30 of which are equipped with public address systems. Approximately 10 buses are air-conditioned, and the majority have a seating capacity for 44 adults.

Omnibus presented evidence of its financial condition as of the close of its fiscal year ended August 31, 1976. At that time applicant's balance sheet reflected a net worth of \$61,630, and its statement of income showed an excess of receipts over expenditures of \$63,499, before adjusting for operating loss carry-over and income taxes. Applicant's president testified that Omnibus is now in even better financial condition, but declined, at the insistence of its counsel, to produce more recent financial data. The evidence shows that since May 1, 1977, Omnibus added 49 used school buses to its fleet. The cost and method of financing this addition was not disclosed, other than that the buses were paid for in cash, partially from retained earnings. On cross-examination, applicant's president estimated that the company's assets

3/ No reason was presented for the absence of Customs' representative, while Bretton Woods' representative was said to be at a picnic.

had increased by approximately \$260,000 (some 135 percent) while equity and liabilities had increased only approximately \$64,000 (some 80 percent). No explanation of this discrepancy could be elicited.

Applicant's president has testified that Omnibus has been performing service for all five contracting parties, and copies of its contracts with Clasco, Inc. (WSS), Customs, the Comptroller and Bretton Woods have been submitted. As noted above, applicant was ordered to cease and desist from engaging in transportation for hire between points in the Metropolitan District on May 13, 1977. The evidence adduced at both the May 27 and June 28, 1977, hearings clearly shows that Omnibus understood the nature of Order No. 1686 and the mandate of the Compact that no operations be conducted without appropriate authority. Nevertheless, Omnibus continued to provide transportation-for-hire services without either a certificate or temporary authority.

The service required by the Comptroller is the transportation of Treasury Department employees from the Guest Quarters, Alexandria, Va., to L'Enfant Plaza, Washington, D. C., each weekday morning and return each afternoon. One bus is required to depart the Guest Quarters at 7:45 a.m. and to depart L'Enfant Plaza at 4:45 p.m., pursuant to applicant's written contract with the Comptroller. Applicant's service to date is said to be satisfactory, and, if it were not available, the Comptroller would be inconvenienced by having to search for other transportation. Omnibus has been providing the service continually for approximately 18 months and has continued to provide service after May 13, 1977.

The 4-H sponsors summer programs involving educational field trips to points in the Metropolitan District. Each program lasts one week and follows a predetermined itinerary. On Sundays, applicant would be required to transport approximately one busload of passengers and their baggage from Washington National Airport and Dulles International Airport to the 4-H Center in Chevy Chase, Md. Return service to the airports would be effected on the following Saturday. In addition, many other program participants arrive at 4-H on Sunday by interstate motor coach. These interstate coaches are typically chartered to provide the local service described hereinbelow, as well as the long-haul service. The witness from 4-H testified, however, that on Sunday the interstate drivers have often driven the maximum number of hours allowed by law. Accordingly, 4-H may need as many as five buses on a Sunday evening for a two-hour night tour of Washington, D. C. On Monday through Friday of each week, service is needed one-way (a) from 4-H to the District of Columbia, and (b) from the District of Columbia to 4-H, and round-trip, beginning and ending at 4-H and extending to the Agricultural Research Center, Beltsville, Md., Arlington National Cemetery and Mt. Vernon, Va., and various points in the District of Columbia.

The 4-H has used applicant's service in the past and found it satisfactory. Omnibus has been utilized on only a few occasions, however, since the above-referenced Order No. 1686 was entered. On two or three occasions, four years ago, 4-H used the service of protestant McMichael on short notice, and was dissatisfied. 4/ Cooperation between the carrier and 4-H is said to be very important to the success of 4-H's programs. The 4-H does not now have a contract with Omnibus, but is willing to enter into a contract should this application be granted.

Recently, 4-H has been using the service of Atwood's Transport Lines, Inc., and has found such service to be satisfactory. The 4-H, however, would prefer to use Omnibus because of that company's familiarity with the 4-H program and its slightly lower rate.

WSS provides housing for between 20 and 40 students at Fairfax Heritage Apartments and requires weekday transportation for these students to and from the facilities of WSS, departing at approximately 7:50 a.m. and returning at approximately 3:30 p.m. One bus a day is required, and applicant has been providing such service for about four years, including the period between the date on which Order No. 1686 was entered and the effective date of its temporary authority. Omnibus originally entered into a contract with Clasco, Inc., formerly the parent company of WSS. Subsequently, WSS was sold to Airco, Inc., and that company has continued to pay Omnibus for the provision of transportation service.

Protestant McMichael, as pertinent, is authorized to transport passengers, in charter operations, from points in the District of Columbia and Prince George's and Montgomery Counties, Md., to points in the Metropolitan District. It operates 20 school buses and is experienced in the transportation of children. McMichael asserts that it is willing and able to provide service for Bretton Woods and 4-H (except, of course, that McMichael may not originate charters at Washington National or Dulles International Airports). McMichael's authority would not embrace service for Customs, the Comptroller, or WSS.

The Compact, Title II, Article XII, §4(b) provides that

[T]he Commission shall issue a certificate to any qualified applicant therefor, authorizing the whole or any part of the transportation covered by the application, if it finds, after hearing held upon reasonable notice, that the applicant is fit, willing and able to perform such transportation properly and to conform to the provisions of this Act and the

4/ Apparently, McMichael was subcontracted to provide service in connection with work scheduled to be done by D. C. Transit System, Inc.

rules, regulations, and requirements of the Commission thereunder, and that such transportation is or will be required by the public convenience and necessity; otherwise such application shall be denied.

Considering the evidence of record herein, we find that the public convenience and necessity requires (a) service from Washington National Airport to the 4-H Center for 4-H, (b) service for the Comptroller as described above, and (c) service for WSS substantially as described above. 5/ As discussed supra, there is no competent evidence in this record justifying permanent authorization of service for Customs and Bretton Woods. Protestant McMichael is available to provide the transportation embraced by the Bretton Woods part of the application and both McMichael and Atwood's Transport Lines, Inc., are available to provide that portion of the 4-H service for which no need is found.6/

We further find, however, that applicant has failed to establish that it is fit, willing and able properly to perform these services and to comply with the requirements of the Compact and the Commission's rules, regulations and orders thereunder.

Applicant's past conduct demonstrates a pattern of serious and continuing violations of the Compact and this Commission's rules, regulations and orders thereunder. The burden, therefore, is on applicant to rebut the import of its past conduct in order to establish its fitness to receive authority from this Commission. In this instance, Omnibus seeks to explain its past illegal operations by its alleged unfamiliarity with the jurisdiction of this Commission. 7/ We believe, however, that it was incumbent upon applicant, when it was apprised of the requirements of the Compact, to make the effort to determine whether its operations were legal and to cease conducting illegal operations pending the prosecution of appropriate applications. The record clearly shows that Omnibus not only failed in this respect, but continued to conduct illegal operations even after being ordered to cease and desist therefrom. We conclude, therefore, that Omnibus knowingly and willfully continued to engage in the transportation for hire of persons between points in the Metropolitan District in blanket disregard of the requirements of the Compact and the Commission's orders thereunder.

While we are mindful that applicant did file applications for temporary authority and permanent authority within a reasonable time after the institution of Formal Complaint No. 77-2, these acts, without more, cannot support the necessary finding that applicant is fit, willing and able to conform to the provisions of the Compact and our rules, regulations and orders thereunder. This is not to say that a finding of

5/ The correct origin point for this service would be Fairfax Heritage Apartments.

6/ McMichael cannot provide service from Dulles International Airport to the 4-H Center.

7/ See Order No. 1716.

fitness is precluded by past unlawful operations. To the contrary, this Commission has often granted a certificate to a carrier who previously had operated either in ignorance of the Compact's requirements or under a bona fide color of right. Here, however, Omnibus was fully informed of its obligations and deliberately chose to flout the law.

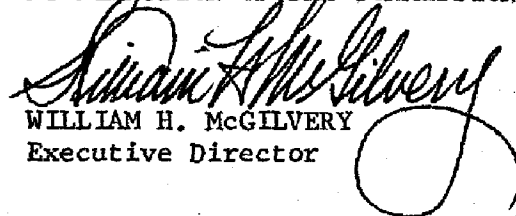
Moreover, even in its ordinary dealings with the Commission, Omnibus has been remiss. On each of three occasions it did not timely remit assessments levied pursuant to Title II, Article XII, §19 of the Compact as required by Order Nos. 1686, 1694 and 1698, and, as noted above, applicant refused to supply the Commission with a full and complete current financial statement as required.

In light of applicant's history of transgressions, the paucity of mitigating circumstances involved, and no indication that applicant has any meaningful intention of complying with pertinent regulatory requirements in the future, the record affords no justifiable basis for concluding that Omnibus is fit to operate as a carrier of passengers between points in the Metropolitan District. Accordingly, this application must be denied. To permit an orderly transition, however, for those persons now utilizing applicant's service, we shall extend the effective period of Omnibus' temporary authority to embrace a period of 20 days from the date of service hereof.

THEREFORE, IT IS ORDERED:

1. That Application No. 996 of Omnibus Corporation be, and it is hereby, denied.
2. That the expiration date of the temporary authority heretofore granted by Order No. 1716, heretofore established as October 31, 1977, be, and it is hereby, extended until 11:59 p. m., Tuesday, November 15, 1977.

BY DIRECTION OF THE COMMISSION:


WILLIAM H. MCGILVERY
Executive Director